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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536



JUL 02 2003

FILE  Office: HARLINGEN

Date:

IN RE: Applicant: 

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who applied for admission into the United States at Progreso, Texas, on January 23, 2000, by falsely representing herself as a United States citizen. The applicant presented a U.S. birth certificate in the name of [REDACTED]. She was convicted of a violation of 8 U.S.C. § 1325(a)(3) on January 24, 2000, and sentenced to 90 days S/S and 3 years USR. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for having falsely represented herself as a citizen of the United States, and she was removed to Mexico on January 24, 2000. Therefore, she is also inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1).

On January 31, 2000, the applicant again applied for admission into the United States at Laredo, Texas, by falsely representing herself as a United States citizen. The applicant was removed to Mexico on January 31, 2000, pursuant to section 235(b)(1) of the Act. She is, therefore, also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for attempting to reenter the United States without being admitted after having been ordered removed. The applicant is the beneficiary of an approved Petition for Alien Relative as the spouse of a U.S. citizen. She seeks permission to reapply for admission under section 212(a)(9)(A)(iii), 8 U.S.C. § 1182(a)(9)(A)(iii).

Citing *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg. Comm. 1963), the district director determined that the applicant is mandatorily inadmissible to the United States for having been found inadmissible under section 212(a)(6)(C)(ii) of the Act, and no waiver is available for such ground of inadmissibility. The district director then denied the application accordingly.

On appeal, the applicant states that she has completed two years of her punishment. She asks for forgiveness and states that her husband needs her to be by his side because he is having an operation on his knees. The applicant pleads to be allowed to be by his side as she has suffered much from the mistake she made.

The applicant also requests oral argument. 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. The Bureau has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Section 212(a)(9)(A) of the Act provides, in part, that:

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Clauses (i) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(C) of the Act provides, in part, that:

(i) Any alien who-

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

Section 212(a)(6)(C)(ii) of the Act provides that:

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

The record contains a Form I-860 that reflects that the applicant was determined to be inadmissible under section 212(a)(6)(C)(ii) of the Act on January 24, 2000, and again on January 31, 2000, for having falsely represented herself as a United States citizen. Since no waiver of such ground of inadmissibility is available, she is mandatorily inadmissible to the United States. No purpose would be served in granting the present application, and a favorable exercise of discretion in this matter is not warranted.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish the warranting of a favorable exercise of the Attorney General's discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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